

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL WOMMER,

Defendant.

Case No. 2:10-cr-00596-GMN-GWF

ORDER

Government's Motion for
Withdrawal of Report and
Recommendation (#50)

This matter comes before the Court on Government's Motion for Withdrawal of Report and Recommendation (#50), filed on December 16, 2011 and Defendant's Response and Partial Opposition to Government's Motion for Withdrawal of Report and Recommendation (#52), filed on January 3, 2012.

On November 4, 2011, the Defendant filed a Motion to Dismiss Count Four of the Superseding Indictment (#45). The Government failed to file a response, and on December 9, 2011, the Court entered a Report and Recommendation (#49) that Defendant's motion be granted. Shortly thereafter, the Government filed a Motion for Withdrawal of Report and Recommendation (#50), arguing that the Order to Continue (#48), signed by the Court on November 22, 2011, extended the time for the Government's response until February 2, 2012, and therefore, the Court was premature in entering its Report and Recommendation.

In response, Defendant filed a partial objection to the Government's Motion for Withdrawal, stating that he believes that the Report and Recommendation was correctly decided and should not be withdrawn, but has no objection to the Court allowing the Government an opportunity to file a response to the Motion to Dismiss Count Four (#45). The Defendant requests

1 that if the Court gives the Government an opportunity to respond, that Defendant also be provided
2 an opportunity to reply to that response. Defendant further requests oral argument be held on this
3 matter. On January 3, 2012, the Government filed their Response to Defendant's Motion to
4 Dismiss Count Four of the Superseding Indictment (#51), with the caveat that if the Court does not
5 grant the Government's Motion for Withdrawal and allow the Government to file a response to the
6 motion, the Court should treat this response as a motion for reconsideration of the Report and
7 Recommendation. That same day, Defendant filed a Reply (#53) to the Government's Response,
8 arguing that, at this point, the Government's response is a fugitive document because the Court has
9 not granted the government leave to file such.

10 The Court rejects the Government's argument that the Order to Continue (#45), which
11 extended all trial deadlines in this matter, extended the time for the government's response to
12 Defendant's motion. The Court, as a matter of course, does not consider an order continuing the
13 trial and related deadlines in a case, to extend the time for response to a pending motion. The
14 parties should have filed a stipulation with the Court requesting an extension of the response
15 deadline, if that was their intent. The response to Defendant's Motion to Dismiss (#45) was
16 therefore due no later than November 21, 2011, and the Government's failure to respond
17 constituted a consent to granting such motion. *See* LR 7-2(d).

18 However, given the apparent confusion and misunderstanding concerning the response
19 deadline and the Defendant's non-opposition to allowing the Government to file a response to the
20 motion, the Court will grant the Government's Motion for Withdrawal of Report and
21 Recommendation (#50), and allow the Government an opportunity to respond. Although the
22 government's Response (#51) was filed without the Court's permission, in the interest of
23 efficiency, the Court will accept the Government's Response (#51). The Court further grants
24 Defendant ten days from the date of this Order in which to file a reply to the Government's
25 Response (#51).

26 The Court will schedule oral argument on the Defendant's Motion to Dismiss Count Four
27 (#45). The Court also notes that the Defendant filed his First Motion to Dismiss Count Five of the
28 ...


1 Superceding Indictment (#54) on January 3, 2012. The Court will set both motions (#45 and #54)
2 for oral argument on **Tuesday, February 7, 2012 at 9:30 am**. Accordingly,

3 **IT IS HEREBY ORDERED** that Government's Motion for Withdrawal of Report and
4 Recommendation (#50) is **granted**. The Court withdraws its Report and Recommendation (#49)
5 and grants the Government an opportunity to respond by virtue of its Response (#51).

6 **IT IS FURTHER ORDERED** that Defendant shall have **ten (10) days** from the date of
7 this Order to file a reply to the Government's Response (#51).

8 **IT IS FURTHER ORDERED** that a hearing on Defendant's Motion to Dismiss Count
9 Four of the Superceding Indictment (#45) and Defendant's Motion to Dismiss Count Five of the
10 Superceding Indictment (#54) is set for **Tuesday, February 7, 2012 at 9:30 am** in Las Vegas
11 Courtroom 3A.

12 DATED this 4th day of January, 2012.

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15 GEORGE FOLEY, JR.
16 United States Magistrate Judge
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